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HOUSE BILL 685

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO ADMINISTRATIVE PROCEDURES; ENACTING THE
ADMINISTRATIVE ACCOUNTABILITY ACT; PROVIDING FOR PROCEDURES TO
ENHANCE ACCOUNTABILITY IN AGENCY PROCEEDINGS, RULEMAKING,
ADJUDICATIONS, SANCTIONS, FEES, LICENSING AND INSPECTIONS;
ESTABLISHING REPORTING REQUIREMENTS; PROVIDING FOR EXEMPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Administrative Accountability Act".

Section 2. DEFINITIONS.--As used in the Administrative
Accountability Act:

A. "adjudication" means the process for
determination of facts or application of law pursuant to which
an agency formulates and issues an order;

B. "agency" means a statewide board, authority,

1 commission, institution, department, division, officer or other
2 statewide government entity that is authorized or required by
3 law to make rules or to adjudicate. "Agency" includes the
4 agency head and one or more members of the agency head, agency
5 employees or other persons directly or indirectly purporting to
6 act on behalf of, or under the authority of, the agency head.
7 The term does not include the governor, legislature or
8 judiciary;

9 C. "agency action" means:

10 (1) the whole or part of any agency order or
11 rule;

12 (2) the failure to issue an order or rule; or

13 (3) an agency's performance of, or failure to
14 perform, any duty, function or activity or to make any
15 determination required by law;

16 D. "agency head" means the individual or body of
17 individuals in which the ultimate legal authority of an agency
18 is vested;

19 E. "disputed case" means an adjudication in which
20 an opportunity for an evidentiary hearing is required by law;

21 F. "evidentiary hearing" means a hearing for the
22 receipt of evidence to resolve a disputed issue in which the
23 decision of the hearing officer may be made only on material
24 contained in the record created at the hearing;

25 G. "law" means federal or state constitution or

1 statute, judicial decision, common law, rule of court,
2 executive order or rule or order of an agency;

3 H. "license" means a permit, certificate, approval,
4 registration, charter or similar form of permission required by
5 law that is issued by an agency;

6 I. "licensing" means the grant, denial, renewal,
7 revocation, suspension, annulment, withdrawal or amendment of a
8 license;

9 J. "notify" means to take such steps as may be
10 reasonably required to inform another person in the ordinary
11 course, whether or not the other person actually comes to know
12 of it;

13 K. "order" means an agency adjudication of
14 particular applicability that determines the legal rights,
15 duties, privileges or immunities or other legal interests of
16 one or more specific persons;

17 L. "party" means the agency taking action, the
18 person against whom the action is directed and any other person
19 named as a party or permitted to intervene;

20 M. "person" means an individual, corporation,
21 business trust, estate, trust, partnership, limited liability
22 corporation, association, joint venture, public corporation,
23 government or governmental subdivision, agency or
24 instrumentality or any other legal or commercial entity;

25 N. "proceeding" means any type of formal or

1 informal agency process or procedure commenced or conducted by
2 an agency. The term includes adjudication, rulemaking and
3 investigation;

4 O. "publisher" means the state records
5 administrator or records center to which is assigned the task
6 of publishing rules under the State Rules Act and other
7 substantive functions under this act;

8 P. "record" means information that is inscribed on
9 a tangible medium or that is stored in an electronic or other
10 medium and is retrievable in perceivable form;

11 Q. "rule" means the whole or part of an agency
12 statement of general applicability that implements, interprets
13 or prescribes law or policy or the organization, procedure or
14 practice requirements of an agency. "Rule" includes the
15 amendment, repeal or suspension of an existing rule, but does
16 not include:

17 (1) statements concerning only the internal
18 management of an agency and not affecting private rights or
19 procedures available to the public;

20 (2) agency declaratory orders;

21 (3) a decision or order in a disputed case;

22 (4) an intergovernmental or interagency
23 memorandum, directive or communication that does not affect the
24 rights of, or procedures and practices available to, the
25 public;

- 1 (5) an opinion of the attorney general;
2 (6) an executive order of the governor;
3 (7) a statement that establishes criteria or
4 guidelines to be used by the staff of an agency in performing
5 audits, investigations or inspections, settling commercial
6 disputes, negotiating commercial arrangements or in the
7 defense, prosecution or settlement of cases, if disclosure of
8 the criteria or guidelines would enable law violators to avoid
9 detection, facilitate disregard or requirements imposed by law
10 or give a clearly improper advantage to persons who are in an
11 adverse position to the state; or

12 (8) guidance documents;

13 R. "rulemaking" means the process for adopting,
14 amending or repealing a rule;

15 S. "sanction" includes the whole or part of any
16 agency:

17 (1) prohibition, requirement, limitation or
18 other condition affecting the freedom of any person or the
19 person's property;

20 (2) withholding of relief;

21 (3) imposition of any form of penalty;

22 (4) destruction, taking, seizure or
23 withholding of property;

24 (5) assessment of damages, reimbursement,
25 restitution, compensation, taxation, costs, charges or fees;

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1 (6) requirement, revocation, amendment,
2 limitation or suspension of a license; or

3 (7) taking or withholding of other compulsory,
4 restrictive or discretionary action;

5 T. "small business" means a business entity,
6 including its affiliates, that is independently owned and
7 operated and that employs fifty or fewer full-time employees;
8 and

9 U. "written" means inscribed on a tangible medium.

10 Section 3. GENERAL ACCOUNTABILITY IN AGENCY

11 PROCEEDINGS.--

12 A. In order to promote general accountability in
13 agency proceedings, a person shall disclose the person's name
14 during the course of reporting an alleged violation of law or
15 rule that results in an agency proceeding, unless such
16 disclosure is prohibited by another law. During the course of
17 an agency proceeding, the name of the complainant shall be
18 public record unless the agency determines that the release of
19 the complainant's name may result in substantial harm to any
20 person or to the public health or safety.

21 B. In order to promote general accountability in
22 agency proceedings, a proceeding before any agency involving a
23 person who is on active duty in the military service of the
24 United States or this state as a necessary party, that occurs
25 during such period of service or within sixty days thereafter,

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1 may be stayed in the discretion of the agency before which it
2 is pending, on its own motion. The agency shall not stay an
3 action or proceeding on its own motion if the service member
4 makes a written objection to the stay. Such proceeding shall
5 be stayed on application to the agency by such person or some
6 person on the person's behalf, unless in the written decision
7 of the agency, the ability of the service member to pursue the
8 claim or defense in the action or proceeding is not prejudiced
9 by the military service.

10 Section 4. ACCOUNTABILITY IN AGENCY RULEMAKING.--

11 A. In order to promote accountability in agency
12 rulemaking, on or before December 31 of each year, each agency
13 shall prepare and make available to the public the regulatory
14 agenda that the agency expects to follow during the next year.
15 The regulatory agenda shall not prohibit an agency from
16 undertaking any rulemaking if that action has not been included
17 in the agency's annual regulatory agenda. An agency's annual
18 regulatory agenda shall include:

19 (1) a summary of all final rulemaking
20 concluded during the previous year, including any rulemaking
21 terminated;

22 (2) a summary of all pending rulemaking
23 before the agency;

24 (3) a review of existing rules, including a
25 summary of any proposed or anticipated changes to the existing

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1 rules;

2 (4) a summary of any proposed or anticipated
3 new rules not otherwise covered under a review of the agency's
4 existing rules; and

5 (5) a summary of any privatization options and
6 nontraditional regulatory approaches being considered by the
7 agency.

8 B. In order to promote accountability in agency
9 rulemaking impacting small businesses, an agency proposing a
10 new rule or an amendment to an existing rule that may have an
11 impact on small business shall consider each of the methods
12 described in this subsection for reducing the impact of the
13 rulemaking on small businesses. The agency shall reduce the
14 impact by using one or more of the following methods, if it
15 finds that the methods are legal and feasible in meeting the
16 statutory objectives that are the basis of the proposed
17 rulemaking:

18 (1) establish less stringent compliance or
19 reporting requirements in the rule for small businesses;

20 (2) establish less stringent schedules or
21 deadlines in the rule for compliance or reporting requirements
22 for small businesses;

23 (3) consolidate or simplify the rule's
24 compliance or reporting requirements for small businesses;

25 (4) establish performance standards for small

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1 businesses to replace design or operational standards in the
2 rule; and

3 (5) exempt small businesses from any or all
4 requirements of the rule.

5 C. In order to promote accountability in agency
6 rulemaking, a grant of rulemaking authority is necessary but
7 not sufficient to allow an agency to adopt a rule; a specific
8 law to be implemented is also required. An agency may adopt
9 only rules that implement or interpret the specific powers and
10 duties granted by the enabling statute. No agency shall have
11 authority to adopt a rule only because it is reasonably related
12 to the purpose of the enabling legislation and is not arbitrary
13 and capricious or is within the agency's class of powers and
14 duties, nor shall an agency have the authority to implement
15 statutory provisions setting forth general legislative intent
16 or policy. Statutory language granting rulemaking authority or
17 generally describing the powers and functions of an agency
18 shall be construed to extend no further than implementing or
19 interpreting the specific powers and duties conferred by the
20 same statute.

21 Section 5. ACCOUNTABILITY IN AGENCY ADJUDICATIONS.--

22 A. In order to promote accountability in agency
23 adjudications, time frames for a person to appeal an agency
24 action to an agency for the purpose of initiating an
25 adjudication shall be established and administered in the

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1 following manner:

2 (1) if a person is allowed by law to appeal an
3 agency action to an agency for the purpose of initiating an
4 adjudication, then by no later than December 31, 2007 the
5 agency shall establish by rule a time frame for the person to
6 appeal the agency action to an agency for the purpose of
7 initiating an adjudication, unless such a time frame already
8 exists by statute or rule;

9 (2) the time frame for a person to appeal an
10 agency action to an agency for the purpose of initiating an
11 adjudication means the number of days after a person receives
12 written notice of an agency action until the time the person
13 aggrieved by the agency action must submit written notice to an
14 agency indicating that the person intends on appealing the
15 agency action to the agency;

16 (3) an agency may establish different time
17 frames for a person to appeal an agency action to an agency for
18 each type of adjudication; and

19 (4) if an agency fails to establish a time
20 frame for a person to appeal an agency action to an agency for
21 the purpose of initiating an adjudication, then the time frame
22 to appeal shall be thirty days.

23 B. In order to promote accountability in agency
24 adjudications, time frames for agency consideration of an
25 adjudication shall be established and administered in the

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1 following manner:

2 (1) if a person is allowed by law to appeal an
3 agency action to an agency for the purpose of initiating an
4 adjudication, then by no later than December 31, 2007, an
5 agency shall establish by rule a time frame for the agency
6 consideration of an adjudication, unless such a time frame
7 already exists by statute or rule;

8 (2) the time frame for the agency
9 consideration of an adjudication means the number of days after
10 the agency receives the last written notice from an aggrieved
11 person appealing an agency action until the agency issues a
12 final written order regarding the appeal;

13 (3) an agency may establish a different time
14 frame for each type of adjudication that the agency must
15 consider;

16 (4) if an agency fails to establish a time
17 frame for the agency consideration of an adjudication, then the
18 time frame shall be one hundred eighty days. The parties
19 subject to the agency adjudication under this paragraph may
20 mutually agree in writing to extend the time frame for the
21 agency consideration of an adjudication by an additional ninety
22 days;

23 (5) within the time frame for the agency
24 consideration of an adjudication, an agency shall issue final
25 written order regarding the appeal. The final written order

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1 shall include, at a minimum:

2 (a) any legal justification for the
3 decision with references to the statutes or rules on which the
4 decision is based;

5 (b) any relevant factual information
6 supporting the decision; and

7 (c) an explanation of the party's right
8 to appeal, including the number of days in which the appeal
9 must be filed; and

10 (6) if the agency fails to issue a final
11 written order within the time frame for the agency
12 consideration of an adjudication, then any party to the appeal
13 may immediately petition for judicial review pursuant to
14 Section 39-3-1.1 NMSA 1978.

15 Section 6. ACCOUNTABILITY IN AGENCY SANCTIONS.--

16 A. In order to promote accountability in agency
17 sanctions, time frames for an agency to pursue an agency
18 sanction against a person shall be established and administered
19 in the following manner:

20 (1) by no later than December 31, 2007, each
21 agency with authority to impose an agency sanction shall
22 establish by rule a time frame for the agency to pursue an
23 agency sanction against a person, unless such a time frame
24 already exists by statute or rule;

25 (2) the time frame for an agency to pursue an

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1 agency sanction means the number of days after the date the
2 agency knew or had reason to know of facts allowing the agency
3 to impose an agency sanction until the date the agency issues a
4 final order imposing a sanction;

5 (3) an agency may establish by rule a
6 different time frame for each type of agency sanction;

7 (4) if an agency fails to establish a time
8 frame for the agency to pursue an agency sanction, then the
9 time frame for the agency to pursue an agency sanction shall be
10 one hundred eighty days;

11 (5) within the time frame for the agency to
12 pursue an agency sanction, an agency must issue a final order
13 imposing an agency sanction. The written order shall include,
14 at a minimum:

15 (a) any legal justification for the
16 decision with references to the statutes or rules on which the
17 decision is based;

18 (b) any relevant factual information
19 supporting the decision; and

20 (c) an explanation of the person's right
21 to appeal, including the number of days in which the appeal
22 must be filed; and

23 (6) if an agency fails to issue an agency
24 sanction within the applicable time frame, then the agency is
25 barred from further pursuing the agency sanction.

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1 B. In order to promote accountability in agency
2 sanctions, a person shall have the right to proceed directly to
3 court in lieu of an agency adjudication under the following
4 circumstances:

5 (1) if an agency proposes or imposes an agency
6 sanction on a person requiring payment of a total sum in excess
7 of five hundred thousand dollars (\$500,000), the person may
8 elect to forego additional administrative remedies and may
9 immediately petition for judicial review pursuant to Section
10 39-3-1.1 NMSA 1978; and

11 (2) a written record of an agency either
12 proposing or imposing an agency sanction on a person requiring
13 payment of a total sum in excess of five hundred thousand
14 dollars (\$500,000) shall be treated as an agency's final
15 decision for purposes of seeking judicial review under Section
16 39-3-1.1 NMSA 1978.

17 Section 7. ACCOUNTABILITY IN AGENCY FEES.--In order to
18 promote accountability in agency fees, each agency:

19 A. shall not charge or receive a fee or make a rule
20 establishing a fee unless the fee for the specific activity is
21 expressly authorized by statute;

22 B. shall identify the statute that authorized the
23 fee on documents relating to the collection of the fee;

24 C. shall prepare, beginning on July 1, 2008, and
25 each year thereafter, a written summary identifying:

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1 (1) each fee charged or received by the agency
2 with a reference to the statute authorizing the fee;

3 (2) the amount of each fee and the total
4 amount collected from each fee; and

5 (3) a general description of how each fee is
6 distributed and used by the agency; and

7 D. shall make the summary in Subsection C of this
8 section available for public inspection upon request.

9 Section 8. ACCOUNTABILITY IN AGENCY LICENSING.--

10 A. As used in this section:

11 (1) "administratively complete" means an
12 agency has determined that an applicant for a license has
13 submitted all information required by statute or rule which
14 allows the agency to conduct a substantive review of the
15 request for a license;

16 (2) "administratively deficient" means an
17 agency has determined that an applicant for a license has
18 failed to submit information required by statute or rule which
19 prevents the agency from conducting a substantive review of the
20 request for a license;

21 (3) "overall time frame" means the number of
22 days after receipt of an application for a license during which
23 an agency determines whether to grant or deny a license, and it
24 includes both the time frame for administrative review and the
25 time frame for substantive review;

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1 (4) "substantive review" means an agency
2 determines whether an application or applicant for a license
3 meets all substantive criteria required by statute or rule;

4 (5) "time frame for administrative review"
5 means the number of days after the date an agency receives an
6 applicant's request for a license until the date the agency
7 determines that the request for the license is administratively
8 complete or administratively deficient. The time frame for
9 administrative review shall not include the period of time
10 during which an agency provides public notice of the license or
11 performs a review of the request for a license under the time
12 frame for substantive review; and

13 (6) "time frame for substantive review" means
14 the number of days after the date of completion of the time
15 frame for administrative review until the date an agency
16 concludes the substantive review of a license. The time frame
17 for substantive review shall include the time period for any
18 public notice or hearings required by law.

19 B. In order to promote accountability in agency
20 licensing, an agency shall provide a person with the following
21 information at the time the person obtains an application for a
22 license:

23 (1) a list of all the steps that the person is
24 required to take in order to obtain the license;

25 (2) the name and telephone number of an agency

1 contact who can answer questions or provide assistance
2 throughout the licensing process; and

3 (3) the applicable overall time frame, time
4 frame for administrative review and time frame for substantive
5 review.

6 C. In order to promote accountability in agency
7 licensing, by no later than December 31, 2007 an agency that
8 issues licenses shall have in place final rules establishing an
9 overall time frame, time frame for administrative review and
10 time frame for substantive review for each type of license.

11 These time frames shall be established in the following manner:

12 (1) a rule regarding an overall time frame for
13 each type of license shall state separately a time frame for
14 administrative review and a time frame for substantive review;

15 (2) if an overall time frame already exists by
16 statute but does not specify a separate time frame for
17 administrative review and a separate time frame for substantive
18 review, the agency shall establish by rule a separate time
19 frame for administrative review and a separate time frame for
20 substantive review;

21 (3) if a time frame for administrative review
22 or a time frame for substantive review already exists by
23 statute or rule but does not specify an overall time frame, the
24 agency shall establish by rule an overall time frame and either
25 a time frame for administrative review or time frame for

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1 substantive review that is not addressed by statute or rule;

2 (4) an agency does not need to promulgate by
3 rule an overall time frame, time frame for administrative
4 review, or time frame for substantive review if a license is
5 issued:

6 (a) pursuant to tribal state gaming
7 compacts;

8 (b) within thirty days after receipt of
9 initial application; or

10 (c) by a lottery method;

11 (5) an agency may establish a different
12 overall time frame, time frame for administrative review and
13 time frame for substantive review for each type of license; and

14 (6) agencies shall consider all of the
15 following when establishing a time frame by rule:

16 (a) the complexity of the licensing
17 subject matter;

18 (b) the resources of the agency;

19 (c) the economic impact of delay on the
20 regulated community;

21 (d) the impact of the licensing decision
22 on public health and safety;

23 (e) the possible use of volunteers with
24 expertise in the subject matter area;

25 (f) the possible increased use of

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1 general licenses for similar types of licensed businesses or
2 facilities;

3 (g) the possible increased cooperation
4 between the agency and the regulated community; and

5 (h) increased agency flexibility in
6 structuring the licensing process and personnel.

7 D. In order to promote accountability in agency
8 licensing, a time frame for administrative review for each type
9 of license shall be administered in the following manner:

10 (1) within the time frame for administrative
11 review, an agency shall issue a written notice to an applicant
12 for a license informing the applicant as to whether information
13 submitted to the agency is administratively complete or
14 administratively deficient;

15 (2) if an agency determined that an
16 application is administratively deficient, the agency shall
17 include a comprehensive list of the specific deficiencies in
18 the written notice. If the agency issues a written notice of
19 deficiencies within the time frame for administrative review,
20 the time frame for administrative review and overall time frame
21 are suspended from the date the notice is issued until the date
22 that the agency receives the missing information from the
23 applicant; and

24 (3) if an agency does not issue a written
25 notice within the time frame for administrative review, the

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1 application is deemed administratively complete.

2 E. In order to promote accountability in agency
3 licensing, a time frame for substantive review for each type of
4 license shall be administered in the following manner:

5 (1) within the time frame for substantive
6 review, an agency may submit one comprehensive written request
7 for additional information to an applicant, or the agency and
8 applicant may mutually agree in writing to allow the agency to
9 submit supplemental requests for additional information;

10 (2) if an agency issues a comprehensive
11 written request or a supplemental request by mutual written
12 agreement for additional information, the time frame for
13 substantive review and overall time frame are suspended from
14 the date the request is issued until the date that the agency
15 receives the additional information from the applicant; and

16 (3) by mutual written agreement, an agency and
17 an applicant for a license may extend the time frame for
18 substantive review and the overall time frame; however, an
19 extension of the time frame for substantive review and the
20 overall time frame may not exceed twenty-five percent of the
21 overall time frame.

22 F. In order to promote accountability in agency
23 licensing, an overall time frame for each type of license shall
24 be administered in the following manner:

25 (1) unless an agency and an applicant for a

1 license mutually agree to extend the time frame for substantive
2 review and the overall time frame, an agency shall issue a
3 written notice granting or denying a license within the overall
4 time frame to an applicant; and

5 (2) if an agency denies an application for a
6 license, the agency shall include in the written notice at
7 least the following information:

8 (a) justification for the denial with
9 references to the statutes or rules on which the denial is
10 based; and

11 (b) an explanation of the applicant's
12 right to appeal the denial, which shall include the number of
13 days in which the applicant must file a protest challenging the
14 denial and the name and telephone number of an agency contact
15 person who can answer questions regarding the appeals process.

16 G. In order to promote accountability in agency
17 licensing, an agency shall be held accountable in the following
18 manner for its failure to adhere to an applicable time frame:

19 (1) if an agency does not issue to an
20 applicant the written notice granting or denying a license
21 within the overall time frame or within the time frame
22 extension, the agency:

23 (a) shall refund to the applicant all
24 fees charged for reviewing and acting on the application for
25 the license;

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1 (b) shall excuse payment of any such
2 fees that have not yet been paid;

3 (c) shall not require an applicant to
4 submit an application for a refund;

5 (d) shall make the refund within thirty
6 days after the expiration of the overall time frame or the time
7 frame extension;

8 (e) shall make the refund from the fund
9 in which the application fees were originally deposited; and

10 (f) shall continue to process the
11 application; and

12 (2) the agency shall pay a penalty to the
13 state general fund for each month after the expiration of the
14 overall time frame or the time frame extension until the agency
15 issues written notice to the applicant granting or denying the
16 license. The agency shall pay the penalty from the agency fund
17 in which any application fees were originally deposited. The
18 penalty shall be one percent of the total fees received by the
19 agency for reviewing and acting on the application for each
20 license that the agency has not granted or denied on the last
21 day of each month after the expiration of the overall time
22 frame or time frame extension for that license.

23 H. In order to promote accountability in agency
24 licensing, an agency shall not base a licensing decision, in
25 whole or in part, on a licensing requirement or condition that

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1 is not specifically authorized by statute or rule. A general
2 grant of authority in statute does not constitute a basis for
3 imposing a licensing requirement or condition unless a rule is
4 made pursuant to that general grant of authority that
5 specifically authorizes the requirement or condition.

6 Section 9. ACCOUNTABILITY IN AGENCY INSPECTIONS.--

7 A. In order to promote accountability in agency
8 inspections, an inspector or regulator of an agency who enters
9 any premises of a regulated person for the purpose of
10 conducting an inspection pursuant to a license shall:

11 (1) present photo identification on entry of
12 the premises;

13 (2) state the purpose of the inspection and
14 the legal authority for conducting the inspection when
15 initiating the inspection;

16 (3) disclose any applicable inspection fees;

17 (4) afford an opportunity to have an
18 authorized on-site representative of the regulated person
19 accompany the inspector or regulator of the agency on the
20 premises, except during confidential interviews;

21 (5) provide notice of the right to have copies
22 of any original documents taken by the agency during the
23 inspection if the agency is permitted by law to take original
24 documents, a split of any samples taken during the inspection
25 if the split of any samples would not prohibit an analysis from

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1 being conducted or render an analysis inconclusive and copies
2 of any analysis performed on samples taken during the
3 inspection;

4 (6) inform each person that a conversation is
5 being recorded if the inspector or regulator decides to tape
6 record the conversation; and

7 (7) inform each person interviewed during the
8 inspection that statements made by the person may be included
9 in the inspection report.

10 B. On initiation of an inspection of any premises
11 of a regulated person, an inspector or regulator of an agency
12 shall provide in writing the rights described in Subsection A
13 of this section, the name and telephone number of a contact
14 person available to answer questions regarding the inspection,
15 and the rights to appeal a final decision of an agency based on
16 the results of the inspection, including the name and telephone
17 number of a person to contact within the agency.

18 C. An inspector or regulator of an agency shall
19 obtain the signature of the regulated person or on-site
20 representative of the regulated person on the writing
21 prescribed in Subsection B of this section indicating that the
22 regulated person or on-site representative of the regulated
23 person has read the writing prescribed in Subsection B of this
24 section. The agency shall maintain a copy of this signature
25 with the inspection report and shall leave a copy with the

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1 regulated person or on-site representative of the regulated
2 person. If a regulated person or on-site representative of the
3 regulated person is not at the site or refuses to sign the
4 writing prescribed in Subsection B of this section, the
5 inspector or regulator shall note that fact on the writing
6 prescribed in Subsection B of this section.

7 D. An agency that conducts an inspection shall give
8 a copy of the inspection report to the regulated person or
9 on-site representative of the regulated person at the time of
10 the inspection, within thirty working days after the inspection
11 unless otherwise provided by law or as otherwise required by
12 state or federal law. The inspection report shall contain
13 deficiencies identified during an inspection. Unless otherwise
14 provided by law, the agency may provide the regulated person
15 with an opportunity to correct the deficiencies unless the
16 agency determines that the deficiencies are committed
17 intentionally, not correctable within a reasonable period of
18 time as determined by the agency, evidence of a pattern of
19 noncompliance or a risk to any person or to the health, safety
20 and welfare of the public.

21 E. If the agency allows the regulated person an
22 opportunity to correct the deficiencies pursuant to Subsection
23 D of this section, the regulated person shall notify the agency
24 when the deficiencies have been corrected. Within thirty days
25 of receipt of notification from the regulated person that the

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1 deficiencies have been corrected, the agency shall determine if
2 the regulated person is in substantial compliance and notify
3 the regulated person whether or not the regulated person is in
4 substantial compliance. If the regulated person fails to
5 correct the deficiencies or the agency determines the
6 deficiencies have not been corrected within a reasonable period
7 of time, the agency may take any enforcement action authorized
8 by law for the deficiencies. An agency decision pursuant to
9 this section or Subsection D of this section is not an agency
10 action subject to appeal.

11 F. At least once every month after the commencement
12 of the inspection, an agency shall provide a regulated person
13 with an update on the status of any agency action resulting
14 from an inspection of the regulated person. An agency is not
15 required to provide an update after the regulated person is
16 notified that no agency action will result from the inspection
17 or after the completion of action resulting from the
18 inspection.

19 G. The inspections procedures set forth in this
20 section do not authorize an inspection or any other act that is
21 not otherwise authorized by law. The inspection procedures set
22 forth in this section only apply to inspections necessary for
23 the issuance of a license or to determine compliance with
24 license conditions and requirements. This section does not
25 apply to criminal investigations, investigations under tribal-

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1 state gaming compacts, undercover or confidential
2 investigations that are generally or specifically authorized by
3 law or inspections where the inspector or regulator has
4 reasonable suspicion to believe that the regulated person may
5 be engaged in criminal activity. Nothing in this section shall
6 be used to exclude evidence in a criminal proceeding.

7 H. If an inspector or regulator gathers evidence in
8 violation of this section, the violation shall not be a basis
9 to exclude the evidence in a civil or administrative
10 proceeding, if the penalty sought is the denial, suspension or
11 revocation of the regulated person's license or a civil
12 penalty. However, if an inspector or regulator gathers
13 evidence in violation of this section, the violation shall be
14 considered by an agency, judge, administrative law judge or
15 hearing officer as grounds for reduction of any fine or
16 penalty. In addition, the failure of an agency employee to
17 comply with this section constitutes cause for disciplinary
18 action or dismissal of any employee.

19 Section 10. REPORTING.--

20 A. The following written documents shall be
21 submitted to the governor, president pro tempore of the senate,
22 speaker of the house of representatives and publisher:

23 (1) on or before December 31 of each year,
24 each agency subject to Subsection A of Section 4 of the
25 Administrative Accountability Act shall submit its regulatory

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1 agenda;

2 (2) beginning on July 1, 2008, and by July 1
3 of each year thereafter, each agency subject to Subsection B of
4 Section 5 of the Administrative Accountability Act shall submit
5 a written report setting forth compliance levels regarding its
6 time frames for agency consideration of an adjudication. The
7 report shall include, at a minimum, the number of adjudications
8 considered by the agency, the number of adjudications that the
9 agency failed to consider within the time frame for the agency
10 consideration of an adjudication and a brief explanation as to
11 why an agency failed to timely consider each matter;

12 (3) beginning on July 1, 2008, and by July 1
13 of each year thereafter, each agency subject to the provisions
14 of Section 6 of the Administrative Accountability Act shall
15 submit its written summary of fees as set forth in Section 6 of
16 this act; and

17 (4) beginning on July 1, 2008, and by July 1
18 of each year thereafter, each agency subject to the provisions
19 of Subsections C through G of Section 7 of the Administrative
20 Accountability Act shall submit a written report setting forth
21 compliance levels regarding its overall time frames, time
22 frames for administrative review and time frames for
23 substantive review. The reports shall include, at a minimum,
24 the number of licenses issued or denied within the applicable
25 time frames, the number of licenses that the agency failed to

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1 consider within the applicable time frames, a brief explanation
2 as to why an agency failed to timely consider each matter, the
3 dollar amount of all fees returned to applicants and the dollar
4 amount of all penalties paid to the state general fund due to
5 the failure to comply with overall time frames.

6 B. Agencies may consolidate the written documents
7 identified in Subsection A of this section into one or more
8 documents to facilitate reporting in a combined manner.

9 C. The president pro tempore of the senate and the
10 speaker of the house of representatives shall forward the
11 written reports identified in Subsection A of this section to
12 one or more interim or standing legislative committees for
13 further review.

14 D. The publisher shall provide for public
15 inspection copies of the documents identified in Subsection A
16 of this section. The publisher may publish these documents in
17 the New Mexico register.

18 Section 11. EXEMPTIONS.--The governor, by executive
19 order, may exempt an agency from one or more provisions of the
20 Administrative Accountability Act. The executive order shall
21 set forth any and all reasons for providing an agency with an
22 exemption from that act. A copy of the executive order shall
23 be delivered to the president pro tempore of the senate and the
24 speaker of the house of representatives. The president pro
25 tempore of the senate and the speaker of the house of

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1 representatives shall forward the executive order to one or
2 more interim or standing committees for further review.

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